

## **Space Law Symposium IISL / ECSL 2013**

# **The UNIDROIT Space Protocol**

## **The negotiations at Berlin - What promise for the future?**

**Prof. Dr. Stephan Hobe**  
**Director of the Institute of Air and Space Law**  
**University of Cologne, Germany**

<u>Legal Instrument</u>	<u>First negotiations</u> (Committee of gov. Experts)	<u>Diplomatic conference</u>	<u>Opened for Signature</u>	<u>Necessary Instruments of Ratification</u>	<u>Entry into Force</u>
Convention on International Interests in Mobile Equipment	December 1998	29 October – 16 November 2001, Cape Town, South Africa	16 November 2001	3	1 March 2006
Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to <b>Aircraft Equipment</b>	December 1998	29 October – 16 November 2001, Cape Town, South Africa	16 November 2001	8	1 March 2006
Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to <b>Railway Rolling Stock</b>	March 2001	12 – 23 February 2007, Luxembourg, Luxembourg	23 February 2007	4	not yet
Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to <b>Space Assets</b>	December 2003	27 February – 9 March 2012, Berlin, Germany	9 March 2012	10	not yet

## EU Competencies in relation to the Convention & its Protocols

The EU has competence over some of the matters governed by the Cape Town Convention and its three Protocols, while Member States have competence over the other matters governed by these instruments.

The matters which are under the competence the EU are:

- jurisdiction and the recognition of judgements in civil and commercial matters (Regulation (EC) No /44/2001)
- insolvency proceedings (Regulation (EC) No 1346/2000)
- law applicable to contractual obligations (Regulation (EC) 893/2008 (Rome I) )

## **Legal issues in relation to EU Competencies on matters governed by the Convention & its Protocols**

1. Is the EU entitled to sign, accept, approve or accede to the Cape Town Convention and its three Protocols?
2. Are Member States entitled to make declarations on matters within the competence of the EU?

## Regional Economic Integration Organisations

According Art. 48 Cape Town Convention and the corresponding provisions in the three Protocols

- a Regional Economic Integration Organisation established by sovereign States and having competence over matters governed by the Berlin Protocol may similarly sign accept, approve or accede the Cape Town Convention and its Protocols, respectively
- the Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State to the extent that that Organisation has competence over matters governed by the Convention and its Protocols, respectively
- where the number of Contracting States is relevant the Regional Economic Integration Organisation shall not count as a Contracting State;
- the Regional Economic Integration Organisation shall make a declaration specifying the matters governed by the Convention and its three Protocols, respectively.

## Declarations on matters within the competence of the EU

- Member States shall not make declarations on matters which are within the EU's competence.
- EU makes any such declarations on behalf of itself.
- Member States are required to apply provisions covered by the declarations in the manner specified by the EU.
- A matter internal to the EU and has no application on the international plane.
- UNIDROIT as Depositary is, thus, obliged to accept instruments of ratification which accord to the Cape Town Convention and any relevant Protocol, even if they are not in conformity with EU Law.
- The declarations to be made by the EU ensure that the Convention & its Protocols will be applied in conformity with EU Law.

## Avoidance of Conflict with EU-Rules

- Art. VIII (Choice of Law), as formulated in the basic text of the Protocol, might affect the EU-Rules concerning the applicable law,
- but Art. VIII offers the Contracting States an Opt-Out-Solution
  - “1. – This Article applies unless a Contracting State has made a declaration pursuant to Article XLI(2)(a) of this Protocol.”
  - Therefore, by using the Opt-Out-Declaration, the Protocol can be signed / ratified in a version which avoids an effect on EU-Rules on applicable law

## Specific perspective Aspects

- \* The Berlin Space Protocol is the first agreement in the field of space law for over 30 years, and the very first international private law agreement relating to the commercial space industry.
- \* It's a challenging example for the interaction between the public law framework and private law instruments in the space sector.
- \* Its an example for the co-existence of different registration systems in the field of space.

## Future Perspectives

- The Berlin Protocol is an optional instrument, which offers a new tool for the financing of commercial space activities.
- It might not be of concern for those companies, which can provide for financing in anyway.
- It has, however, the ability to grant start-up companies access to the investment capital and finance needed to launch new space-based projects.
- The Berlin Protocol is, therefore, to be considered as an instrument that is not required by all but needed by some.**

## What promise for the Future?

- *The Protocol offers a extent flexibility, e.g. as underlined by the fact that it is left up to the first regulations to define the criteria to identify a space asset for the purpose of registration*
- *This approach offers the opportunity to meet the needs of the commercial space, financial and insurance communities*
- *The work of the Prep Com to be done by representatives of Governments, International Organizations and the industry in relation to the establish-ment and operation of the international registry is therefore of particular importance*
- ***What is the promise for the future?***

***It's up to the participants of the Prep Com to formulate the necessary implementing instruments and up the negotiating states to come to the necessary quorum of ratifications.***